

**COMMITTEE ON SUPERIOR COURT  
MINUTES**

Friday, September 25, 2009  
Arizona State Courts Building  
Conference Room 119 A/B  
1501 W. Washington Street  
Phoenix, AZ 85007

---

**MEMBERS PRESENT:**

Honorable James A. Soto	Honorable Michael Jeanes
Honorable Eddward Ballinger	Honorable Kenneth Lee
Honorable Michael J. Burke	Honorable David Mackey
Honorable James Conlogue	Honorable Margaret Maxwell
Honorable Michael J. Cruikshank	Honorable Stephen McCarville
Honorable Norman Davis	Honorable Colleen McNally
Honorable Andrew Gould	Ms. JoJene Mills
Honorable Sue Hall	Marcus Reinkensmeyer
Mr. Josh Halversen - <i>telephonic</i>	Honorable Monica L. Stauffer
Mr. Tim Hardy	Honorable Stephen Villarreal
Honorable Charles Harrington	Ms. Susan Wilson
Honorable Bethany Hicks	

---

**MEMBERS ABSENT:**

Honorable Robert Duber II	Honorable Danna Hendrix
---------------------------	-------------------------

---

**PRESENTERS/GUESTS:**

Honorable Bruce Cohen	Ms. Amy Love, AOC
Ms. JL Doyle, AOC	Ms. Niki O'Keefe
Ms. Dori Ege, AOC	Ms. Susan Pickard, AOC
Ms. Melinda Hardman, AOC	Ms. Janet Scheiderer, AOC
Ms. Patience Huntwork, AOC	Mr. Jeff Schrade, AOC
Mr. Paul Julien, AOC	Mr. David Withey, AOC

---

**STAFF:**

Ms. Kay Radwanski	Ms. Tama Reily
-------------------	----------------

---

**I. REGULAR BUSINESS**

**A. Welcome and Opening Remarks**

With a quorum present, the September 25, 2009, meeting of the Committee on Superior Court (COSC) was called to order by the Hon. James A. Soto, Chair, at 10:05 a.m.

Judge Soto welcomed the following new committee members:

Honorable Michael J. Burke, Presiding Judge, Superior Court in La Paz County  
Honorable James Conlogue, Superior Court in Cochise County  
Honorable Michael J. Cruikshank, Associate Presiding Judge, Superior Court in Pima County  
Honorable Monica Stauffer, Presiding Judge, Superior Court in Greenlee County

**B. Approval of Minutes**

The minutes of the May 15, 2009, COSC meeting were presented for approval.

**MOTION:** To approve the minutes of the May 15, 2009, COSC meeting as presented. Motion seconded. Approved unanimously.  
COSC-09-010

**II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS**

**A. Introduction – AOC Education Services Director**

Mr. Paul Julien, AOC judicial education officer, introduced Mr. Jeff Schrade, new AOC education services director. Mr. Schrade was formerly the senior director for the Arizona Foundation for Legal Services and Education. Mr. Schrade shared his interest in the work of this committee, and he commented that he plans to become acquainted with the superior courts and the court community.

**B. Child Support Guidelines Review Committee**

Honorable Bruce Cohen, chair of the Child Support Guidelines Review Committee, (GRC) updated the committee on the status of the new Guidelines. He explained the committee's review process, what it encompassed, and the basis for their recommendations. The committee has been extended to continue its work through December 2009, with the final report and recommendations being presented to the AJC in October. The report, the new guidelines, and the calculator will be on the GRC webpage in early October, and COSC members were asked to go to the website and test the calculator and provide feedback on the guidelines.

In response to members' comments, Judge Cohen noted the following:

- The complexity of the table and potential difficulty for pro pers has been discussed previously, and the GRC plans to look at simplifying the steps at its next meeting.
- The final report will contain the complete description of the methodology used in calculating support.
- A printed calculation process will be available for parents lacking access to a computer.
- The new guidelines do not serve to "redistribute income"; rather, they seek to balance the "earner's priority" philosophy of the current guidelines, with the needs of the child, and to honor the child support statute, A.R.S. § 25-320, which states the support should maintain "the standard of living had the parents stayed together."

- The calculator for the current guidelines will remain available for an indefinite period of time to allow for retroactive modifications.

Judge Cohen reported that the GRC will reconvene in December to review feedback received on the guidelines and complete any needed modifications. The final product will be presented to COSC in February 2009. Judge Cohen also thanked members of the COSC ad hoc subcommittee that met over the summer to provide input to the GRC.

### **C. Legislative Proposals – 2010 Session**

Ms. Amy Love, legislative liaison for the AOC, discussed legislation passed in the recent session that impacts superior courts. A print-out of the more relevant bills was provided to members, as well as the legislative website, [www.supreme.state.az.us/legupdate](http://www.supreme.state.az.us/legupdate), should members wish to see a more exhaustive list of bills. Two bills highlighted by Ms. Love included:

#### **SB1106: DOMESTIC VIOLENCE; CHILD CUSTODY**

Authorizes a court granting custody of a child to refrain from considering which parent is more likely to allow the child continuing contact with the other parent if the court determines one parent is acting in good faith to protect the child from domestic violence or child abuse. Requires the court to consider specific findings as to allegations of domestic violence when making a custody determination.

#### **SB1088: DOMESTIC VIOLENCE; DATING RELATIONSHIPS**

Adds current or previous romantic or sexual relationships to the definition of domestic violence to qualify individuals seeking an order of protection. Ms. Love added there will be some clean-up on this bill for the 2010 session in order to ensure dating relationships are included in this definition.

Effective date for all of the legislation is September 30, 2009. Ms. Love reported that the only proposal for the 2010 legislative session being processed currently relates to implementation of E-filing and E-access to court records.

### **D. ACJA §§ 1-604 and 1-605: Remote Electronic Access to Case Records and Requests for Bulk or Compiled Data**

Ms. Melinda Hardman, analyst in the AOC Court Programs Unit, presented two new proposed code sections. Ms. Hardman reported that the code sections came about as a result of the passage of the rule petition amending Supreme Court Rule 123 and governing remote electronic access to records maintained in the judiciary, including bulk data, database access, and case look-up websites. The new code sections deal with the standards and procedures for courts to release records.

In response to member comments, Ms. Hardman and the Honorable Michael Jeanes, Chair of the Rule 123 Committee, explained that sealed or non-sealed records were not included in the committee's review of Rule 123. The primary focus of the committee was remote access, and that access pertains strictly to civil and criminal documents. Family court records, probate records, and juvenile records are excluded from access. In addition, Ms.

Hardman described some of the measures included in the rule to prevent misuse of bulk data released to a vendor, including a user agreement and liability insurance policy.

**MOTION:** To approve ACJA § 1-604: Remote Electronic Access to Case Records as presented. Motion seconded. Approved unanimously. COSC-09-011

**MOTION:** To approve ACJA § 1-605: Requests for Bulk or Compiled Data as presented. Motion seconded. Approved unanimously. COSC-09-012

**E. ACJA § 1-303: Code of Conduct for Judicial Employees**

Mr. David Withey, AOC chief legal counsel, presented new ACJA § 1-303: Code of Conduct for Judicial Employees. This code section was previously presented to COSC in February 2008; however, members had concerns about amendments addressing employees seeking judicial department elective office. The new code rectifies those concerns and was developed so it corresponds with the new Code of Judicial Conduct where the same principles apply to both judges and employees. Mr. Withey described the amendments, additional language, and new provisions in the code section. The code section is expected to be presented at the October or December AJC meeting.

During discussion, several members voiced concerns that the language in Rule 2.6, which states a “judicial employee *shall* provide authorized assistance,” could inadvertently lead to staff giving legal advice. In addition, members of the Clerks’ Association reported having issues about some of the language in Rules 4.3 and 4.4, concerning procedures for judicial employees running for elective office. A conference call is planned for the Clerks and Mr. Withey next week to hone and provide clarity in the language exemption.

**MOTION:** To approve ACJA § 1-303: Code of Conduct for Judicial Employees as presented. Motion seconded. Motion and second withdrawn.

**MOTION:** To table the matter of ACJA § 1-303: Code of Conduct for Judicial Employees until further discussion and modification has taken place. Motion seconded. Approved unanimously. COSC-09-013

**F. ACJA § 6-201: Adult Intensive Probation Evidence-Based Practices**

Ms. JL Doyle, AOC Adult Probation Services, presented the amended proposed code section ACJA § 6-201: Adult Intensive Probation Evidence-Based Practices. This code was previously presented to COSC in September 2008. Ms. Doyle explained the changes that have been made to the code section, which serve to simplify comparison between current intensive probation supervision (IPS) and newly proposed IPS. In addition, the changes ensure the code remains consistent with the intent of the IPS statute, and specific guidelines have been added in to address the change in the caseload ratio of officers to probationers.

**MOTION:** To approve ACJA § 6-201: Adult Intensive Probation Evidence-Based Practices. Motion seconded. Approved unanimously. COSC-09-014

**G. ACJA § 6-211: Inter-County Courtesy Transfer**

Ms. Dori Ege, AOC Adult Probation Division manager, presented proposed ACJA § 6-211: Inter-County Transfers. Ms. Ege explained that this code section was put into place in January 2004; however, it recently underwent review and revision aimed at clarifying the language and improving the process by which courtesy transfers of probationers are made from county to county. Ms. Ege directed the committee's attention to section F(5) of the code, where some language changes have been made since this meeting's materials were prepared. The new language reads as follows:

“A judge from the sending county may assess the probationer who requests a transfer additional amounts monthly, as part of the probation service fees, charged pursuant to A.R.S. § 13-901(A) following due consideration of the probationer's ability to pay the increased fee.”

Ms. Ege explained the changes were recommended by legal counsel to ensure consistency with the statute allowing the authority to assess any kind of additional probation service fees. The code section was approved by the Committee on Probation in early September with the exception of striking the first five words “In accordance with caseload capacities...” in sections E(1) and E(2), and approved by the Committee on Limited Jurisdiction Courts with the changes described. The code section will be presented to the AJC in October.

**MOTION:** To approve ACJA § 6-201: Inter-County Courtesy Transfer as written and amended. Motion seconded. Approved unanimously. COSC-09-015

**H. ACJA § 3-302: Parent Education Programs**

Ms. Susan Pickard, specialist in the AOC Court Programs Unit, presented proposed code section ACJA § 3-302: Parent Education Programs. The proposed amendments would add the option of distance learning methods, such as online, correspondence, or cable television, to parent education programs. In addition, the responsibility for review and approval of any videotape used in a parent education program would be placed with the superior court in each county. Ms. Pickard noted that the Arizona Conciliation Court Roundtable group has reviewed and approved the code section. A best practices checklist for courts considering online parent education classes was provided to members.

Judge McNally related Maricopa County's experience with the pilot program for parent education programs. She did note that the pilot, by administrative order, was limited to persons who meet ADA qualifications, live out of state, or are incarcerated.

**MOTION:** To approve ACJA § 3-302: Parent Education Programs as presented. Motion seconded. Vote: 19-2-0. Motion passed. COSC-09-016

**I. Parenting Plans Workgroup**

Judge Colleen McNally, co-chair of the Parenting Plans Workgroup, reported that the workgroup has now completed the parenting time guide. She reviewed the history of the parenting guide, explained the composition of the workgroup, and the process they used to complete the guide. She added that the guide is to be published on-line once it receives approval from COSC and AJC. Judge McNally thanked COSC for sponsoring the workgroup. A copy of the new parenting plans guide was provided in the meeting materials.

**MOTION:** To approve the final draft of “Planning for Parenting Time: Arizona’s Guide for Parents Living Apart” as presented. Motion seconded.  
Approved unanimously. COSC-09-017

**J. Update on the Strategic Plan**

Ms. Janet Scheiderer, director of the AOC Court Services Division, briefed the committee on the progress of Chief Justice Berch’s strategic agenda. She stated they have consolidated the suggestions received from the various committees, commissions, and associations and are in the process of reviewing and editing. She added that due to limited resources, it would not be possible to incorporate all suggestions, and some balancing of priorities would be necessary. Possible strategic agenda titles are still being considered, and members were welcomed to continue providing ideas for this. The next step will be to present the draft document to AJC for input. It will then be provided to the whole court community for additional input.

**K. H1N1 Update**

Ms. Niki O’Keefe, director of the AOC Administrative Services Division, and courts’ liaison with the executive branch for the H1N1 flu, updated the committee on the current recommendations from the Arizona Department of Health Services for the 2009 – 2010 influenza seasons. Due to the effects of the first wave of H1N1 in 2009, employers are being encouraged to take recommendations seriously. Ms. O’Keefe encouraged members to contact her by telephone (602-452-3306) if they have any questions. Informational handouts and brochures were provided in the meeting materials.

**L. Update: Arizona Supreme Court Rules Agenda**

Ms. Patience Huntwork, staff attorney to the Arizona Supreme Court, reported on the new rules impacting the superior courts. She reminded members they may view rules, pending rule petitions, and amendments to rules on the Arizona Court Rules Forum website at <http://www.supreme.state.az.us/rules/>. All of the rules reviewed by Ms. Huntwork become effective January 2010, unless indicated otherwise.

**R-06-0016**

Amends Rule 1.6, Rules of Criminal Procedure. Provides for appearances by defendants via videoconferencing, at the sole discretion of the court and without the consent of the defendant, under specified conditions.

**R-08-0015**

Amends Rule 50(b), Rules of Civil Procedure, to remove the requirement that a party renew a motion for judgment as a matter of law at the close of all evidence.

**R-08-0017**

Amends Rules 6(c) and 6(e), Rules of Protective Order Procedure, to conform with amendments to A.R.S. § 13-3602(E) and A.R.S. § 12-1809(E) and to make technical changes to Rules 1, 2, 4, and 7 of the Rules of Protective Order Procedure.

**R-08-0019**

Amends Rules 23 and 28, Rules of Procedure for the Juvenile Court and Rules 7.3 and 7.5, Rules of Criminal Procedure, allowing for court orders that juveniles or adults charged with specified offenses submit biological samples for DNA testing.

**R-08-0020**

Amends Rule 41, Rules of Procedure for Juvenile Court et al, implementing new provisions concerning open court proceedings and notice requirements for juvenile court.

**R-08-0024**

Amends Rule 27.4, Rules of Criminal Procedure, to allow courts to adjust the term of a probationer's supervised probation based on "earned time credit."

**R-08-0025**

Adopts Rule 97, Rules of the Supreme Court, which establishes written performance standards and a public review process for superior court commissioners.

**R-08-0026**

Amends Rule 28.2, Rules of Criminal Procedure, which grants prosecutors and/or law enforcement agencies discretion to dispose of evidence, specifically, court-ordered fingerprints.

**R-08-0027**

Amends and adopts on a permanent basis Rules 57.1 and 57.2, Arizona Rules of Civil Procedure, related to procedures for victims of identity theft.

**R-08-0031**

Amends Rules 74, et al Rules of Family Procedure, dealing with parenting coordinator recommendations and summary judgment motions.

**R-08-0034**

Amends Rule 4, Rules for Judicial Performance, relating to organization of conference teams, dissemination of findings, and confidentiality.



**R-08-0035**

Amends Rule 408, Rules of Evidence, prohibiting the use of settlement offers for impeachment purposes.

**R-08-0036**

Amends Rules 703 and 705, Rules of Evidence, recognizing the court's discretion not to allow an expert to disclose to the jury inadmissible evidence upon which the expert's opinion is based.

**R-08-0038**

Amends Rule 96, Rules of the Supreme Court, powers and duties of court commissioners.

**R-08-0039**

Amends Rule 123, Rules of the Supreme Court, Rule 2.3 Rules of Criminal Procedure, and adds Rule 5(f), Rules of Civil Procedure, to provide greater access to case records.

**R-09-0004**

Adopts Rule 502, Rules of Evidence, concerning inadvertent disclosure of information covered by attorney-client privilege.

**R-09-0009**

Adopts Rule 804(b)(5), Rules of Evidence, a new hearsay exception.

**R-09-0013**

Amends Rules 48.1, 50, 52-62 and 65 and Forms 1, 2, and 3, and adds Form 1A, Rules of Procedure for the Juvenile Court.

**R-09-0015**

Amends Rules 55 and 66, Rules of Procedure for Juvenile Court, conforms the rules to recent statutory changes, case law, and Indian Child Welfare Act.

**The following rules become effective September 30, 2009:****R-09-0026**

Amends Rule 6(C), Arizona Rules of Protective Order Procedure, which adds relationships of a romantic or sexual nature to the definition of statutory relationships in A.R.S. § 13-3601. Comments are due by May 20, 2010.

**R-09-0028**

Amends Rules 11.5 and 11.6, Rules of Criminal Procedure, conforming the rules to amendments to A.R.S. § 13-4515 for calculating maximum time allowed for a restoration to competency program in a criminal case.



### **III. OTHER BUSINESS**

#### **A. Next Meeting:**

Friday, November 6, 2009

10:00 a.m. – 3:00 p.m.

Conference Room 230

Arizona State Courts Building

1501 W. Washington

Phoenix, Ariz.

#### **B. Good of the Order/Call to the Public**

Judge David Mackey, superior court in Yavapai County, noted that his court will be moving to the new AJACs case management system before the end of September. He asked that the AOC's IT Department provide an update on AJACs at the November COSC meeting.

The meeting was adjourned at 2:20 pm.